

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 112 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

SHIVABHAI B. PATEL

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Appearance:

MR MANISH R BHATT for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 11/11/98

ORAL JUDGEMENT

1. For two assessment years 1975-76 and 1976-77 a composite statement of case has been submitted and following questions of law have been referred by Income Tax Appellate Tribunal, Ahmedabad Bench "C" arising out of its decision in Income Tax Appeal Nos. 2240 and

2241/Ahd./81 as required by the Commissioner of Income Tax, Ahmedabad:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the order dated 8th February, 1979, passed by the Commissioner of Income-tax under Section 263 of the Act was liable to set aside?
2. Whether, the Tribunal was right in law and in facts and circumstances of the case in coming to the conclusion that since they had found the order under Section 236 itself was bad, there was no question of upholding the consequential orders of the Income-tax Officer to give effect to the order of the Commissioner under Section 263"

2. The facts relevant for the present purposes and out of which reference has been made may be notice.

For the two assessment years in question, Income Tax Officer has completed original assessments on 4.12.1977. Those assessments were set aside by Commission in exercise of his powers under Section 263 by holding the same to be prejudicial to the interest of revenue by his order dated 8.2.79 and the Income Tax Officer was directed to make fresh assessments. The order under Section 263 was ultimately set aside by the Tribunal. Against the order of Tribunal setting aside the order under Section 263 passed by Commissioner of Income Tax, the order of Tribunal was made subject matter of reference before this court, and the Income Tax Officer made fresh assessments in accordance with directions contained in the order of Commissioner of Income Tax which had been set aside. On appeal against the assessment orders, Commissioner of Income Tax (Appeals) set aside the fresh assessment orders on the ground that order of the Commissioner of Income Tax under Section 263 having been cancelled the consequential orders could not have been passed in pursuance of those directions. On appeal Revenue failed before the Tribunal also. The only ground raised before the Tribunal was that since reference application is pending before the High Court, the order passed by the Income Tax Officer ought not to be set aside, until decision of those reference applications.

3. The order of the Tribunal setting aside the order under Section 263 was subject matter of Income Tax Reference No. 113 of 1982. The same has been decided by

this court on 8.10.93 answering the questions in favour of Assessee and against the Revenue.

4. There cannot be any doubt about the proposition that once original assessments have come into force unless the same are set aside in accordance with law in appropriate proceedings, they hold the field and there cannot be two operative assessments at the same time. The effect of order under Section 263 made by the Commissioner of Income Tax was that the original assessment stood set aside. However, once an order under Section 263 was set aside it resulted in restoration of original assessments on record, there cannot be any room for fresh assessment orders even if the same have come into existence in pursuance of direction issued under Section 263. It cannot be said that by complying with the direction under Section 263, the remedy of appeal or getting determination of the question by way of further proceedings in accordance with the provisions of Income Tax Act become redundant. The consequence of setting aside of an order under Section 263 must follow, namely, the order passed in consequence thereof, must also fail. As has been noticed above, the order passed by the Commissioner under Section 263 was set aside by the Tribunal and on further reference, the High Court has found the order of the Tribunal to be justified in that regard.

5. We therefore have no hesitation in answering the question referred to us in affirmative, that is to say, in favour of the Assessee and against the Revenue.

No one appeared on behalf of the assessee.

There shall be no order as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)